

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

MACOMB COUNTY EMPLOYEES'
RETIREMENT SYSTEM, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

MASSEY ENERGY COMPANY, DON L.
BLANKENSHIP, BAXTER F. PHILLIPS, JR.,
ERIC B. TOLBERT, RICHARD M. GABRYS,
LADY BARBARA THOMAS JUDGE, DAN R.
MOORE, JAMES B. CRAWFORD, ROBERT H.
FOGLESONG and STANLEY C. SUBOLESKI,

Defendants.

No. 5:10-cv-00689

Hon. Irene C. Berger

FIREFIGHTERS' RETIREMENT SYSTEM OF
LOUISIANA, Individually and On Behalf of All
Others Similarly Situated,

Plaintiff,

v.

MASSEY ENERGY COMPANY, DON L.
BLANKENSHIP; BAXTER F. PHILLIPS, JR.;
ERIC B. TOLBERT, DAN R. MOORE; E.
GORDON GEE; RICHARD M. GABRYS; JAMES
B. CRAWFORD; ROBERT H. FOGLESONG;
STANLEY C. SUBOLESKI; LADY BARBARA
THOMAS JUDGE; and J. CHRISTOPHER
ADKINS;

Defendants.

No. 5:10-cv-00776

Hon. Irene C. Berger

**STIPULATION AND [PROPOSED] ORDER FOR CONSOLIDATION, APPOINTMENT
OF LEAD PLAINTIFF, AND APPROVAL OF SELECTION OF LEAD COUNSEL**

WHEREAS, on April 29, 2010, the first filed class action complaint (the “*Macomb Action*”)¹ alleging violations of the federal securities laws was filed with this Court on behalf of purchasers or acquirers of the securities of Massey Energy Company (“Massey”). A related complaint² was filed shortly thereafter on May 28, 2010;

WHEREAS, pursuant to Section 21D(a)(3)(A) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-4(a)(3)(A), plaintiff in the *Macomb Action* caused notice to be published on *Business Wire* on April 29, 2010, which informed Class members of their right to seek appointment as lead plaintiff;

WHEREAS, on June 28, 2010, pursuant to Section 21D of the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), movant Massachusetts Pension Reserves Investment Trust (“Massachusetts PRIT”) timely filed a motion to consolidate the above-captioned actions, be appointed as Lead Plaintiff, and approve its selection of Labaton Sucharow LLP (“Labaton Sucharow”) as Lead Counsel and James F. Humphreys & Associates L.C. (“James F. Humphreys & Associates”) as Liaison Counsel (*see Macomb Action Dkt. No. 14*);

WHEREAS, Wayne County Employees’ Retirement System (“Wayne County”) also timely filed a motion to consolidate the above-captioned actions, be appointed as Lead Plaintiff, and approve its selection of counsel as Lead Counsel;

WHEREAS, Wayne County thereafter filed a response acknowledging that Massachusetts PRIT has the largest financial interest of any of the lead plaintiff movants in the above-captioned actions and supporting Massachusetts PRIT’s appointment as Lead Plaintiff (*see Macomb Action Dkt. No. 29*);

¹ *Macomb County Employees’ Ret. Sys. v. Massey Energy Co.*, No. 5:10-cv-00689 (S.D.W.V. Apr. 30, 2010).

² *Firefighters’ Ret. Sys. of La. v. Massey Energy Co.*, No. 5:10-cv-00776 (S.D.W.V. May 28, 2010).

WHEREAS, the MEE Investor Group also timely filed a motion to consolidate the above-captioned actions, be appointed as Lead Plaintiff, and approve its selection of counsel as Lead Counsel;

WHEREAS, the MEE Investor Group also filed a response acknowledging that Massachusetts PRIT has the largest financial interest of any of the lead plaintiff movants in the above-captioned actions and supporting Massachusetts PRIT's appointment as Lead Plaintiff (*see Macomb* Action Dkt. No. 30);

WHEREAS, David Wagner ("Wagner") also timely filed a motion to consolidate the above-captioned actions, be appointed as Lead Plaintiff, and approve his choice of counsel, Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), as Lead Counsel (*see Macomb* Action Dkt. No. 17);

WHEREAS, Massachusetts PRIT and Wagner, the two remaining applicants for Lead Plaintiff, have both sought consolidation and claimed a financial interest in above-captioned actions;

WHEREAS, Massachusetts PRIT and Wagner have agreed to withdraw their opposition briefs filed on July 15, 2010, reply briefs on July 26, 2010, and all subsequent briefing, including any motions to strike or response(s) thereto;

WHEREAS, Wagner, cognizant of the public importance of this securities class action and Massachusetts PRIT's sophistication as an experienced institutional investor, will withdraw his motion for lead plaintiff and support the motion of Massachusetts PRIT;

WHEREAS, Massachusetts PRIT has set forth the reasons why it meets the adequacy and typicality requirements of Rule 23 of the Federal Rules of Civil Procedure (*See Macomb* Action Dkt. Nos. 14-16);

WHEREAS, Wagner will be included as a named plaintiff in a Consolidated Amended Complaint to be filed on behalf of Massachusetts PRIT as Lead Plaintiff;

WHEREAS, Massachusetts PRIT and Wagner have agreed that Labaton Sucharow, representing Massachusetts PRIT, and Robbins Geller, representing Wagner, will competently serve the interests of the putative Class as Co-Lead Counsel, and that James F. Humphreys & Associates will competently serve the putative Class as Liaison Counsel;

IT IS HEREBY STIPULATED AND AGREED, by the undersigned, as follows:

1. The above-captioned actions shall be consolidated for all purposes pursuant to Rule 42 of the Federal Rules of Civil Procedure (the "Consolidated Action");

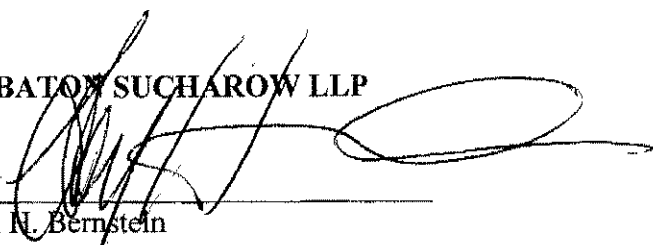
2. Massachusetts Pension Reserves Investment Trust shall be appointed Lead Plaintiff in the Consolidated Action pursuant to § 21D(a)(3)(B) of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B);

3. The selection of Labaton Sucharow LLP and Robbins Geller Rudman & Dowd LLP as Co-Lead Counsel, and James F. Humphreys & Associates L.C. as Liaison Counsel in the Consolidated Action shall be approved pursuant to § 21D(a)(3)(B)(v) of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B)(v).

4. Co-Lead Counsel shall have the authority to speak for all Plaintiffs and Class members in all matters regarding the Consolidated Action, including, but not limited to, pre-trial proceedings, motion practice, trial, and settlement. Co-Lead Counsel shall make all work assignments in such a manner as to facilitate the orderly and efficient prosecution of this litigation, and to avoid duplicative or unproductive effort.

Dated: December ____, 2010

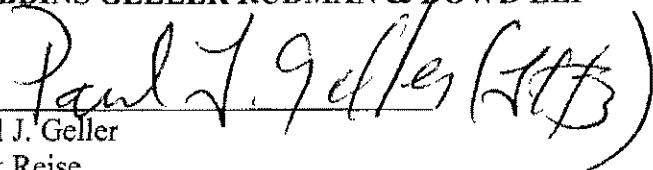
LABATON SUCHAROW LLP

By: 
Joel N. Bernstein
Christopher J. Keller
140 Broadway
New York, New York 10005
Telephone: (212) 907-0700
Facsimile: (212) 818-0477

*Counsel for the Commonwealth of Massachusetts
Pension Reserves Investment Trust and
Proposed Co-Lead Counsel for the Class*

Dated: December ____, 2010

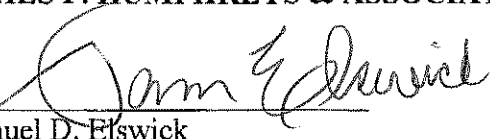
ROBBINS GELLER RUDMAN & DOWD LLP

By: 
Paul J. Geller
Jack Reise
120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: (561) 750-3000
Facsimile: (561) 750-3364

*Counsel for David Wagner and
Proposed Co-Lead Counsel for the Class*

Dated: December 17, 2010

JAMES F. HUMPHREYS & ASSOCIATES L.C.

By: 
Samuel D. Elswick
James A. McKowen
United Center, Suite 800
500 Virginia Street, East
Charleston, West Virginia 25301
Telephone: (304) 347-5050
Facsimile: (304) 347-5055

Proposed Liaison Counsel for the Class

[PROPOSED] ORDER

Pursuant to the Stipulation for Consolidation, Appointment as Lead Plaintiff, and Approval of Selection of Counsel filed by Commonwealth of Massachusetts Pension Reserves Investment Trust ("Massachusetts PRIT") and David Wagner, the pleadings and submissions on record, and good cause appearing,

IT IS HEREBY ORDERED:

1. The above-captioned actions are consolidated for all purposes pursuant to Rule 42 of the Federal Rules of Civil Procedure (the "Consolidated Action").

2. This order (the "Order") shall apply to the Consolidated Action and to each case that relates to the same subject matter that is subsequently filed in this Court or is transferred to this Court, and is consolidated with the Consolidated Action.

3. A Master File is established for the Consolidated Action. The Master File shall be Case No. 5:10-cv-00689. The Clerk shall file all pleadings in the Master File and note such filings on the Master Docket.

4. An original of this Order shall be filed by the Clerk in the Master File. A copy of this Order shall be filed by the Clerk in Case No. 5:10-cv-00776.

5. The Clerk shall mail a copy of this Order to all counsel of record in the Consolidated Action.

6. Every pleading in the Consolidated Action shall have the following caption:

IN RE MASSEY ENERGY CO. SECURITIES LITIGATION
--

Case No. 5:10-cv-00689

7. The Court requests the assistance of counsel in calling to the attention of the Clerk of this Court the filing or transfer of any case that may properly be consolidated as part of the Consolidated Action.

8. When a case that arises out of the same subject matter as the Consolidated Action is hereinafter filed in this Court or transferred from another court, the Clerk of this Court shall:

- A. File a copy of this Order in the separate file for such action;
- B. Mail a copy of this Order to the attorneys for the plaintiff(s) in the newly-filed or transferred case, and to any new defendant(s) in the newly-filed case; and
- C. Make the appropriate entry in the Master Docket for the Consolidated Action.

9. Each new case that arises out of the subject matter of the Consolidated Action shall be consolidated with the Consolidated Action. This Order shall apply thereto, unless a party objects to consolidation (as provided for herein), or to any provision of this Order, within ten (10) days after the date upon which a copy of this Order is served on counsel for such party by filing an application for relief, and this Court deems it appropriate to grant such application. Nothing in the foregoing shall be construed as a waiver of Defendants' right to object to consolidation of any subsequent-filed or transferred related action.

10. Massachusetts PRIT shall be appointed Lead Plaintiff in the Consolidated Action pursuant to § 21D(a)(3)(B) of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B);

11. Labaton Sucharow LLP and Robbins Geller Rudman & Dowd LLP are hereby approved as Co-Lead Counsel for the Class pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v).

12. Co-Lead Counsel shall have the authority to speak for all Plaintiffs and Class members in all matters regarding the Consolidated Action, including, but not limited to, pre-trial proceedings, motion practice, trial, and settlement. Co-Lead Counsel shall make all work assignments in such a manner as to facilitate the orderly and efficient prosecution of this litigation, and to avoid duplicative or unproductive effort. Additionally, Co-Lead Counsel shall have the following responsibilities:

- A. to brief and argue motions;
- B. to initiate and conduct discovery, including, but not limited to, coordination of discovery with Defendants' counsel, and the preparation of written interrogatories, requests for admissions, and requests for production of documents;
- C. to direct and coordinate the examination of witnesses in depositions;

- D. to act as spokesperson at pretrial conferences;
 - E. to call and chair meetings of Plaintiffs' counsel as appropriate or necessary from time to time;
 - F. to initiate and conduct any settlement negotiations with Defendants' counsel;
 - G. to provide general coordination of the activities of Plaintiffs' counsel and to delegate work responsibilities to selected counsel as may be required, in such a manner as to lead to the orderly and efficient prosecution of this litigation and to avoid duplication or unproductive effort;
 - H. to consult with and employ experts;
 - I. to receive and review periodic time reports of all attorneys on behalf of Plaintiffs, to determine if the time is being spent appropriately and for the benefit of Plaintiffs, and to appropriately distribute any Plaintiffs' attorneys' fees that may be awarded by the Court; and
 - J. to perform such other duties as may be expressly authorized by further
-
- order of this Court.

13. James F. Humphreys & Associates L.C. is hereby approved as Liaison Counsel for the Class.

DATED: _____

The Honorable Irene C. Berger
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2010, I electronically filed the Stipulation for Consolidation, Appointment as Lead Plaintiff, and Approval of Selection of Counsel with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

- **Jonathan L. Anderson**
jlanderson@jacksonkelly.com
- **Eric J. Belfi**
ebelfi@labaton.com
- **John F. Dascoli**
johnfdascoli@hotmail.com,
pamdc519@aol.com
- **Alan I. Ellman**
aellman@labaton.com
- **Samuel D. Elswick**
selswick@jfhumphreys.com
- **A. L. Emch**
aemch@jacksonkelly.com,
sra@jacksonkelly.com,
jcrawford@jacksonkelly.com
- **Thomas V. Flaherty**
tflaherty@fsblaw.com,
cmontague@fsblaw.com
- **Troy N. Giatras**
troy@thewvlawfirm.com,
pam@thewvlawfirm.com
- **Tammy R. Harvey**
tharvey@fsblaw.com,
cmontague@fsblaw.com
- **Dennis J. Herman**
dennish@rgrdlaw.com
- **Christopher J. Keller**
ckeller@labaton.com
- **James A. McKowen**
jmckowen@jfhumphreys.com,
dhoffman@jfhumphreys.com,
dmilhoan@jfhumphreys.com,
cs1jam@aol.com
- **Bradley J. Pyles**
brad.pyles@cphlogan.com,
bjpyles@suddenlink.net
- **Darren J. Robbins**
e_file_d@csgrr.com
- **Ronald S. Rolfe**
rrolfe@cravath.com, jsneider@cravath.com,
managing_attorneys_office@cravath.com,
sthompson@cravath.com
- **Stefanie J. Sundel**
ssundel@labaton.com
- **Christopher M. Wood**
cwood@rgrdlaw.com

I also hereby certify that I have mailed the document by United States Postal Service to the following non-CM/ECF participants:

Michael J. Vanoverbeke
Thomas C. Michaud
VANOVERBEKE MICHAUD &
TIMMONY
79 Alfred Street
Detroit, MI 48201

Stephen L. Brodsky
Richard A. Speirs
ZWERLING SCHACHTER &
ZWERLING
41 Madison Avenue, 32nd Floor
New York, NY 10010

David A.P. Brower
Charles J. Piven
BROWER PIVEN
488 Madison Avenue, Eighth Floor
New York, NY 10022

Laurie L. Largent
ROBBINS GELLER RUDMAN &
DOWD
100 Pine Street, Suite 2600
San Francisco, CA 94111

David C. Walton
Tricia L. McCormick
ROBBINS GELLER RUDMAN &
DOWD
655 West Broadway, Suite 1900
San Diego, CA 92101

J. Burton LeBlanc
Mazin Sbaiti
BARON & BUDD
312 Oak Lawn Avenue, Suite 1100
Dallas, TX 75219

Julie A. North
CRAVATH SWAINE & MOORE
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019

Dated: December 17, 2010

/s/ Samuel D. Elswick

Samuel D. Elswick, Bar ID # 9271
**JAMES F. HUMPHREYS &
ASSOCIATES L.C.**
United Center, Suite 800
500 Virginia Street, East
Charleston, West Virginia 25301
Telephone: (304) 347-5050
Facsimile: (304) 347-5055
selswick@jfhumphreys.com